

# LUCE FORWARD

ATTORNEYS AT LAW • FOUNDED 1873  
LUCE, FORWARD, HAMILTON & SCRIPPS LLP

11988 El Camino Real  
Suite 200  
San Diego, CA 92130  
858.720.6300  
858.720.6306 fax  
www.luce.com

MITCHELL P. BROOK, PARTNER  
DIRECT DIAL NUMBER 858.720.6335  
DIRECT FAX NUMBER 858.523.4329  
EMAIL ADDRESS MBROOK@LUCE.COM

30289-104

July 7, 2006

## VIA EXPRESS MAIL

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By:   
Amy M. Sheridan

### Re: NOTICE OF OPPOSITION

Applicant	:	MINTBUY.COM
Mark	:	MINTBUY.COM
Serial No.	:	78/443,048
Publication Date	:	March 14, 2006

Dear Sir or Madam:

Enclosed herewith please find BUY.COM's and BUYMUSIC INC.'s Notice of Opposition in the above-identified matter. The opposed mark was published in the March 14, 2006 edition of the *Official Gazette*. A duplicate copy of this letter is enclosed.

All correspondence in this matter should be sent to:

Mitchell P. Brook, Esq.  
Luce, Forward, Hamilton & Scripps, LLP  
11988 El Camino Real, Ste. 200  
San Diego, California 92130  
(858) 720-6300

Please file-stamp and return the self-addressed postcard to this office for our records. **The Commissioner is hereby authorized to charge our Deposit Account No. 50-2298, in the**

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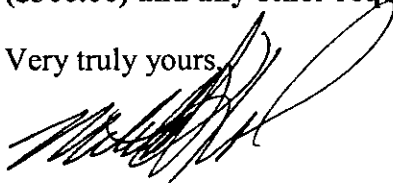
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July 7, 2006  
Page 2

**name of Luce, Forward, Hamilton & Scripps LLP, the fees under Notice of Opposition fee (\$300.00) and any other required filing fee.**

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mitchell P. Brook', written over a horizontal line.

Mitchell P. Brook  
of  
LUCE, FORWARD, HAMILTON & SCRIPPS LLP

Enclosures

3725168.1

**IN THE UNITED STATES PATENT AND TRADEMARK  
OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 78/443,048  
**MINTBUY.COM**  
International Class: 35  
Published in the *Official Gazette* of March 14, 2006

BUY.COM INC. and	)	
BUYMUSIC INC.	)	
	)	
Opposers	)	
	)	
vs.	)	Opposition No. _____
	)	
	)	
MINTBUY.COM	)	
	)	
Applicant	)	
_____	)	

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**NOTICE OF OPPOSITION**

Opposers, Buy.Com Inc., a Delaware corporation located and doing business at 85 Enterprise, Aliso Viejo, California 92656, and BuyMusic Inc., a Delaware corporation doing business at 85 Enterprise, Aliso Viejo, California 92656 and a subsidiary of Buy.Com Inc., (collectively referred to herein as "Buy.Com") believe that they will be damaged by registration of the mark shown in Serial No. 78/443,048, and hereby oppose the same.

**CERTIFICATE OF EXPRESS MAILING**

I hereby certify that this paper is being deposited with the United States Postal Service under 37 C.F.R. §2.198 via Express Mail Label No. EV 749052475 US "Express Mail Post Office to Addressee", in an envelope addressed to Trademark Trial and Appeal Board, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, on this 7<sup>th</sup> day of July, 2006.

07/13/2006 6TH0HAS2 00000066 502298 78443048  
01 FC:6402 300.00 DA

  
Amy M. Sheridan

Applicant's application for "MINTBUY.COM" was filed on June 29, 2004. The goods and services identified include: marketing goods of others from around the world through the Internet; online retail and wholesale store services featuring—men, women and children clothing; men, women and children shoes and, other clothing accessories; watches and other jewelry; computer equipment and, other electronics; toys and games; gift baskets and flowers; home and office furnishing; kitchen and bathroom supplies and products; office equipment and supplies; house wares and appliances; paintings, drawings, pottery, embroidery, woodwork and sculptures; home and garden tools; power and mechanical tools; sporting goods and memorabilia; videos, DVDs, tapes; CDs, cassettes and records; musical instruments and accessories; antiques and collectibles; beauty and health products and accessories; books and magazines; motorcycles, automobiles and boats, along with parts and accessories for same, in International Class 35. It was published for opposition in the Official Gazette on March 14, 2006.

#### GROUND FOR OPPOSITION

1. Common Law Rights. Buy.Com has standing to oppose the published application based on Buy.Com's common law rights in numerous trademarks, including without limitation, their BUY, BUY.COM, BUYMUSIC and BUY MAGAZINE trademarks. Buy.Com has adopted and used the BUY and BUY.COM trademarks (and others) since at least as early as August 25, 1998, and has used it in interstate commerce since at least as early as November 1998. Buy.Com has continued to use the mark and to build a family of marks containing "BUY.COM" in association with a range of goods and services, including among other things an online retail and wholesale store services. This use has been valid and continuous since the date

of first use and has not been abandoned. This use also has been popular, well known and continuous since use commenced and the products and services provided in connection therewith have been the subject of extensive advertising and promotional activities, in addition to news coverage. "BUY.COM" and marks containing the term "BUY" or "BUY + .COM" or "BUY + MUSIC" or "BUY + MAGAZINE", (the "BUY.COM" marks) are distinctive and have acquired secondary meaning through Buy.Com's extensive use. Buy.Com's on-line website has become one of the leading and most famous Internet services. These marks are therefore entitled to strong protection under trademark law and would be damaged by the registration of the mark shown in Application Serial No. 78/443,048.

2. Registrations. Buy.Com is the owner of numerous registrations, including without limitation the following:

- a. U.S. Registration No. 2,376,895 for "BC BUY.COM (Stylized)" in connection with electronic retailing services via computer featuring general merchandise, namely, computers, books, videos, software, games, music and related merchandise, in International Class 35, which recites a date of first use of August 25, 1998 and a date of first use in commerce of November 15, 1998 (copy of printout from PTO database annexed as Exhibit A);
- b. U.S. Registration No. 2,670,844 for "BUY.COM" in connection with online retail and wholesale store services featuring a full line of consumer goods, namely, computers, books, videos, software, games, audio cassettes, compact discs, other audio-media related merchandise, toys, office and school supplies, household appliances, surplus goods, sports equipment, and electronics; online ordering services featuring a full line of consumer goods, namely, computers, books,

videos, software, games, audio cassettes, compact discs, other audio-media related merchandise, toys, office and school supplies, household appliances, surplus goods, sports equipment, and electronics; online distributorship services featuring a full line of consumer goods, namely, computers, books, videos, software, games, audio cassettes, compact discs, other audio-media related merchandise, toys, office and school supplies, household appliances, surplus goods, sports equipment, and electronics; providing an online searchable computer database in the field of consumer merchandise; and dissemination of advertising for others via an on-line electronic communications network, in International Class 35, which recites a date of first use of November 15, 1998 and a date of first use in commerce of November 15, 1998 (copy of printout from PTO database annexed as Exhibit B); and

- c. U.S. Registration No. 2,877,749 for "BUY MAGAZINE" in connection with providing an online magazine on the subjects of general interest, entertainment, movies, books, music, games, sports, travel, telephony, electronics, computers, and software, in International Class 41, which recites a date of first use of September 12, 2003 and a date of first use in commerce of September 12, 2003; and in connection with promoting the goods and services of others by preparing and placing advertisements in an electronic magazine accessed through wired and wireless networks, in International Class 35, which recites a date of first use of September 12, 2003 and a date of first use in commerce of September 12, 2003 (copy of printout from PTO database annexed as Exhibit C);

- d. U.S. Registration No. 2,945,085 for “BUYMUSIC” in connection with providing data bases containing musical and audiovisual recordings; providing databases and information pertaining to music and entertainment; providing links to websites of others featuring music and entertainment; all via the Internet and other electronic communications networks, in International Class 41, which recites a date of first use of July 22, 2003 and a date of first use in commerce of July 22, 2003 (copy of printout from PTO database annexed as Exhibit D); and
- e. U.S. Registration No. 2,990,358 for “BUYMUSIC” in connection with electronic retailing services via computer namely via the internet and other electronic communications networks, featuring music and related merchandise, and featuring audiovisual works, software and players for playing music and audiovisual works, and related merchandise, in International Class 35, which recites a date of first use of April 1999 and a date of first use in commerce of April 1999 (copy of printout from PTO database annexed as Exhibit E).

Each of the above-identified registrations has a filing date that precedes June 29, 2004, the filing date of Applicant’s application. Buy.Com is also the owner of other U.S. and foreign registrations.

3. Buy.Com’s use in interstate commerce in connection with its BUY.COM marks is prior to the filing date of United States Trademark Application Serial No. 78/443,048, which was filed on June 29, 2004 as an Intent-to-Use application.

4. Buy.Com’s mark and trade name are symbolic of the extensive goodwill and consumer recognition built up by Buy.Com in the “BUY.COM” marks through substantial amounts of time and effort in advertising, promotion, substantial sales of goods and services.

Buy.Com has offered its goods and services in association with the "BUY.COM" marks extensively and continuously in commerce. Buy.Com's use has been valid and continuous and has not been abandoned.

5. In view of the similarity of the respective marks and the related nature of the services of the respective parties, it is respectfully evident that Applicant's mark so resembles Buy.Com's mark as to be likely to cause confusion, or to cause mistake, or to deceive, or to falsely suggest an association with Buy.Com.

6. If Applicant is permitted to use and register its mark for its services, as specified in the application herein opposed, the resulting likelihood of confusion, mistake, deception, or false association will cause irreparable damage to the goodwill and consumer recognition that Buy.Com has built up in the BUY.COM marks.

7. Buy.Com avers that the Applicant's use of said mark interferes with the Buy.Com's use of its "BUY.COM" marks and will embarrass Buy.Com in the free use of its marks. Registration of the mark by Applicant will seriously damage Buy.Com under Section 2(d) of the Trademark Act.

8. Buy.Com's "BUY.COM" marks are well known and famous and by virtue of the renown and fame, and in view of the dominant role of fame in analyzing likelihood of confusion, there is an increased likelihood of confusion between the "BUY.COM" marks and the opposed mark.

WHEREFORE, Buy.Com prays that said Application Serial No. 78/443,048 be rejected, that no registration be issued thereon to Applicant and that this opposition be sustained in favor of Buy.Com. A duplicate copy of this Notice of Opposition is enclosed herewith.



The Commissioner is hereby authorized to charge our Deposit Account No. 50-2298 (Luce, Forward, Hamilton & Scripps LLP) the Notice of Opposition filing fee (\$300.00) for any deficit in fees or to credit any overpayment thereto. Please address all correspondence to Mitchell P. Brook, Esq., LUCE, FORWARD, HAMILTON & SCRIPPS LLP, 11988 El Camino Real, Suite 200, San Diego, California 92130.

Respectfully Submitted,

Date: July 7, 2006

By: 

Mitchell P. Brook  
LUCE, FORWARD, HAMILTON & SCRIPPS, LLP  
11988 El Camino Real, 2<sup>nd</sup> Floor  
San Diego, California 92130  
(858) 720-6300

Attorney for Opposers

3723702.1

**IN THE UNITED STATES PATENT AND TRADEMARK  
OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 78/443,048

**MINTBUY.COM**

International Class: 35

Published in the *Official Gazette* of March 14, 2006

BUY.COM INC. and

BUYMUSIC INC.

Opposers

vs.

MINTBUY.COM

Applicant

Opposition No. \_\_\_\_\_

Commissioner for Trademarks

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Alexandria, Virginia 22313-1451

OPPOSER EXHIBIT A



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**BUY.COM**

<b>Word Mark</b>	B BUY.COM
<b>Goods and Services</b>	IC 035. US 100 101 102. G & S: ELECTRONIC RETAILING SERVICES VIA COMPUTER FEATURING GENERAL MERCHANDISE, NAMELY, COMPUTERS, BOOKS, VIDEOS, SOFTWARE, GAMES, MUSIC AND RELATED MERCHANDISE. FIRST USE: 19980825. FIRST USE IN COMMERCE: 19981115
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	26.01.03 - Circles, incomplete (more than semi-circles); Incomplete circles (more than semi-circles)
<b>Serial Number</b>	75625380
<b>Filing Date</b>	January 20, 1999
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	May 23, 2000
<b>Registration Number</b>	2376895
<b>Registration Date</b>	August 15, 2000
<b>Owner</b>	(REGISTRANT) BUY.COM Inc. CORPORATION DELAWARE 21 Brookline Aliso Viejo CALIFORNIA 92656
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	ADAM C STRIEGEL
<b>Type of Mark</b>	SERVICE MARK
<b>Register</b>	PRINCIPAL-2(F)-IN PART
<b>Live/Dead Indicator</b>	LIVE
<b>Distinctiveness</b>	as to "BUY.COM"
<b>Limitation Statement</b>	

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**IN THE UNITED STATES PATENT AND TRADEMARK  
OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 78/443,048

**MINTBUY.COM**

International Class: 35

Published in the *Official Gazette* of March 14, 2006

BUY.COM INC. and

BUYMUSIC INC.

Opposers

vs.

MINTBUY.COM

Applicant

Opposition No. \_\_\_\_\_

Commissioner for Trademarks

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OPPOSER EXHIBIT B



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### Typed Drawing

<b>Word Mark</b>	BUY.COM
<b>Goods and Services</b>	IC 035. US 100 101 102. G & S: Online retail and wholesale store services featuring a full line of consumer goods, namely, computers, books, videos, software, games, audio cassettes, compact discs, other audio-media related merchandise, toys, office and school supplies, household appliances, surplus goods, sports equipment, and electronics; online ordering services featuring a full line of consumer goods, namely, computers, books, videos, software, games, audio cassettes, compact discs, other audio-media related merchandise, toys, office and school supplies, household appliances, surplus goods, sports equipment, and electronics; online distributorship services featuring a full line of consumer goods, namely, computers, books, videos, software, games, audio cassettes, compact discs, other audio-media related merchandise, toys, office and school supplies, household appliances, surplus goods, sports equipment, and electronics; providing an online searchable computer database in the field of consumer merchandise; and dissemination of advertising for others via an on-line electronic communications network. FIRST USE: 19981115. FIRST USE IN COMMERCE: 19981115
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Design Search Code</b>	
<b>Serial Number</b>	75926401
<b>Filing Date</b>	February 23, 2000
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	October 15, 2002
<b>Registration Number</b>	2670844
<b>Registration Date</b>	January 7, 2003
<b>Owner</b>	(REGISTRANT) BUY.COM Inc. CORPORATION DELAWARE 85 Enterprise Aliso Viejo CALIFORNIA 92656
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	Leslie McKnew
<b>Prior Registrations</b>	2376895
<b>Type of Mark</b>	SERVICE MARK

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**IN THE UNITED STATES PATENT AND TRADEMARK  
OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 78/443,048

**MINTBUY.COM**

International Class: 35

Published in the *Official Gazette* of March 14, 2006

BUY.COM INC. and	)	
BUYMUSIC INC.	)	
Opposers	)	
	)	
vs.	)	Opposition No. _____
	)	
	)	
MINTBUY.COM	)	
	)	
Applicant	)	
_____	)	

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Alexandria, Virginia 22313-1451

OPPOSER EXHIBIT C



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# BUY MAGAZINE

<b>Word Mark</b>	BUY MAGAZINE
<b>Goods and Services</b>	IC 041. US 100 101 107. G & S: Providing an online magazine on the subjects of general interest, entertainment, movies, books, music, games, sports, travel, telephony, electronics, computers, and software. FIRST USE: 20030912. FIRST USE IN COMMERCE: 20030912
	IC 035. US 100 101 102. G & S: Promoting the goods and services of others by preparing and placing advertisements in an electronic magazine accessed through wired and wireless networks. FIRST USE: 20030912. FIRST USE IN COMMERCE: 20030912
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Design Search Code</b>	
<b>Serial Number</b>	78326890
<b>Filing Date</b>	November 12, 2003
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	June 1, 2004
<b>Registration Number</b>	2877749
<b>Registration Date</b>	August 24, 2004
<b>Owner</b>	(REGISTRANT) Buy.Com, Inc. CORPORATION DELAWARE 85 Enterprise Aliso Viejo CALIFORNIA 92656
<b>Attorney of Record</b>	Mitchell P. Brook
<b>Prior Registrations</b>	2376895;2424505;2670844
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "magazine" APART FROM THE MARK AS SHOWN



Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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**IN THE UNITED STATES PATENT AND TRADEMARK  
OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 78/443,048

**MINTBUY.COM**

International Class: 35

Published in the *Official Gazette* of March 14, 2006

BUY.COM INC. and )

BUYMUSIC INC. )

Opposers )

vs. )

Opposition No. \_\_\_\_\_

MINTBUY.COM )

Applicant )

\_\_\_\_\_ )

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## BUYMUSIC

<b>Word Mark</b>	BUYMUSIC
<b>Goods and Services</b>	IC 041. US 100 101 107. G & S: Providing data bases containing musical and audiovisual recordings; providing databases and information pertaining to music and entertainment; providing links to websites of others featuring music and entertainment; all via the Internet and other electronic communications networks. FIRST USE: 20030722. FIRST USE IN COMMERCE: 20030722
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Design Search Code</b>	
<b>Serial Number</b>	78262423
<b>Filing Date</b>	June 13, 2003
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	April 20, 2004
<b>Registration Number</b>	2945085
<b>Registration Date</b>	April 26, 2005
<b>Owner</b>	(REGISTRANT) BuyMusic Inc. CORPORATION DELAWARE 85 Enterprise Aliso Viejo CALIFORNIA 92656
<b>Attorney of Record</b>	Mitchell P. Brook
<b>Prior Registrations</b>	2424505
<b>Type of Mark</b>	SERVICE MARK
<b>Register</b>	PRINCIPAL-2(F)
<b>Live/Dead Indicator</b>	LIVE

**IN THE UNITED STATES PATENT AND TRADEMARK  
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In the Matter of Application Serial No. 78/443,048

**MINTBUY.COM**

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# BUYMUSIC

<b>Word Mark</b>	BUYMUSIC
<b>Goods and Services</b>	IC 035. US 100 101 102. G & S: Electronic retailing services via computer namely via the internet and other electronic communications networks, featuring music and related merchandise, and featuring audiovisual works, software and players for playing music and audiovisual works, and related merchandise. FIRST USE: 19990400. FIRST USE IN COMMERCE: 19990400
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Design Search Code</b>	
<b>Serial Number</b>	78262488
<b>Filing Date</b>	June 13, 2003
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	March 30, 2004
<b>Registration Number</b>	2990358
<b>Registration Date</b>	August 30, 2005
<b>Owner</b>	(REGISTRANT) BuyMusic Inc. CORPORATION DELAWARE 85 Brookline Suite 100 Aliso Viejo CALIFORNIA 92656
<b>Attorney of Record</b>	Mitchell P. Brook
<b>Prior Registrations</b>	2424505
<b>Type of Mark</b>	SERVICE MARK

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